IN THE

Supreme Court of the United States

October Term 1976

No. 76-667

CONCERNED CITIZENS OF SOUTHERN OHIO, INC., et al.

Appellants,

v.

THE PINE CREEK CONSERVANCY DISTRICT, et al.,

Appellees.

On Direct Appeal From The United States District Court For The Southern District of Ohio, Western Division

MOTION TO AFFIRM

DUKE W. THOMAS
VORYS, SATER, SEYMOUR & PEASE
52 East Gay Street
Columbus, Ohio 43215
Attorneys for Appellees,
The Pine Creek Conservancy District, et al.

MIDWEST LAW PRINTERS AND PUBLISHERS, INC., Columbus, Ohio 43216

INDEX

	Page
MOTION TO AFFIRM	1
STATEMENT OF THE CASE	1
ARGUMENT	2
CONCLUSION	3
CERTIFICATE OF SERVICE	4

Citations

Cases:

Orr v. Allen, 245 Fed. 486 (S.D. Ohio, W.D. 1917)	2
Orr v. Allen, 248 U.S. 35, 39 S.Ct. 23, 63 L. Ed. 109 (1918)	2
United States v. Maine, 420 U.S. 515 (1975)	2

Statutes:

Ohio Revised Code, Section 6101.36	3

IN THE

Supreme Court of the United States

No. 76-667

CONCERNED CITIZENS OF
SOUTHERN OHIO, INC., et al.
Appellants,

v.

THE PINE CREEK CONSERVANCY
DISTRICT, et al.,
Appellees.

On Direct Appeal From The United States District Court For The Southern District of Ohio, Western Division

MOTION TO AFFIRM

The appellees in the above captioned case move the Court to affirm the judgment of the three-judge court on the ground that it is manifest that the decision of the three-judge court is correct and the arguments of appellants are so unsubstantial as not to need further argument.

STATEMENT OF THE CASE

The appellants in this case have requested this Court to review the dismissal by a three-judge court of appellants' assertion that the Ohio Conservancy Act, Chapter 6101, Ohio Revised Code, is unconstitutional. Although appellants' action seeks declaratory relief, injunctive relief, and damages, the appellants and appellees agreed and recommended to the court below that only the constitutional issues should be considered by the court below. The three-judge court agreed

with this recommendation of the parties and in a Per Curiam opinion of July 6, 1976, and Judgment Order filed on August 23, 1976, overruled, rejected and dismissed appellants' claims that the Ohio Conservancy Act, Chapter 6101, Ohio Revised Code, was unconstitutional.

Appellants have appealed to this Court under 28 U.S.C., Section 1253.

The three-judge court relied upon *Orr v. Allen*, 245 Fed. 486 (1917), *Orr v. Allen*, 248 U.S. 35 (1918), and *United States v. Maine*, 420 U.S. 515 (1975), Jurisdictional Statement, p. 39. It was the conclusion of the three-judge court that all issues raised by appellants had been fully considered in *Orr v. Allen*, that there have been no changes in the Act pertinent to appellants' case in the almost sixty years since *Orr v. Allen*, that dozens of districts have been formed, issued bonds and carried out plans, and that the principles of "stare decisis" as stated in *United States v. Maine*, require rejection of the claims of appellants. 420 U.S. 515 (1975).

ARGUMENT

Chapter 6101, Ohio Revised Code, was the subject of a broadside "due process and equal protection" attack almost sixty years ago in the cases of *Orr v. Allen*, 245 Fed. 486 (1917), and *Orr v. Allen*, 248 U.S. 35 (1918), and was declared to be [redacted]constitutional by this Court. As stated by the three-judge court, ". . . there have been no changes in the Act pertinent to the claims involved in this case." Appellants have shown no substantial question which merits consideration by this Court. They have simply ignored the doctrine of "stare decisis" and do not even discuss *United States v. Maine, supra*, which was relied upon by the three-judge court.

Appellants imply that their property may be taken by the Conservancy District without due process or in disregard of appellants' rights to equal protection. Section 6101.36, Ohio Revised Code, specifically refutes this contention and shows that no property can be taken without a trial by jury:

> "No property shall be taken under sections 6101.01 to 6101.84, inclusive, of the Revised Code, until compensation has been paid according to law. But where a trial is had by jury, and a verdict has been rendered which has been confirmed by the trial court . . . ."

Appellants have raised theoretical, non-existent strawmen in their Jurisdictional Statement in an attempt to have this Court fully hear this case. Appellees submit that this Court's decision in *Orr v. Allen* in 1918 has definitely answered appellants' theoretical issues.

CONCLUSION

Appellants have raised no substantial questions or arguments to need further argument before this Court. Appellees therefore respectfully request this Court to grant their motion to Affirm the decision of the three-judge court.

Respectfully submitted,

DUKE W. THOMAS
VORYS, SATER, SEYMOUR & PEASE
52 East Gay Street
Columbus, Ohio 43215
(614) 464-6263
Attorneys for Appellees,
The Pine Creek Conservancy
District, et al.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion to affirm have been sent by first class mail, postage prepaid, to Robert J. Golten, National Wildlife Federation, 1412 16th Street N.W., Washington, D.C. 20036, and Michael N. Tousey, 169 East Livingston Avenue, Columbus, Ohio 43215, on this 10th day of December, 1976.

DUKE W. THOMAS

§6101.36. *Possession after verdict and deposit of award.* (GC §6828-35)

No property shall be taken under sections 6101.04 to 6101.84, inclusive, of the Revised Code, until compensation has been paid according to law. But where a trial is had by jury, and a verdict has been rendered which has been confirmed by the trial court, the board of directors of the conservancy district may pay the amount allowed into court in money with the costs, and thereupon such court shall make an order admitting the district into possession of the property and confirming its title thereto, although the owner may take steps to take the case to a higher court. Thereupon the board may enter into undisturbed possession of the property and rights involved.